

amount of the exemption allowed as a deduction from the gross estate of a decedent who was a nonresident not a citizen of the United States, see paragraph (a)(3) of § 20.2106-1.

§ 20.2053-1 Deductions for expenses, indebtedness, and taxes; in general.

(a) *General rule.* In determining the taxable estate of a decedent who was a citizen or resident of the United States at death, there are allowed as deductions under section 2053(a) and (b) amounts falling within the following two categories (subject to the limitations contained in this section and in §§ 20.2053-2 through 20.2053-10)—

(1) *First category.* Amounts which are payable out of property subject to claims and which are allowable by the law of the jurisdiction, whether within or without the United States, under which the estate is being administered for—

(i) Funeral expenses;

(ii) Administration expenses;

(iii) Claims against the estate (including taxes to the extent set forth in § 20.2053-6 and charitable pledges to the extent set forth in § 20.2053-5); and

(iv) Unpaid mortgages on, or any indebtedness in respect of, property, the value of the decedent's interest in which is included in the value of the gross estate undiminished by the mortgage or indebtedness.

As used in this subparagraph, the phrase “allowable by the law of the jurisdiction” means allowable by the law governing the administration of decedents' estates. The phrase has no reference to amounts allowable as deductions under a law which imposes a State death tax. See further §§ 20.2053-2 through 20.2053-7.

(2) *Second category.* Amounts representing expenses incurred in administering property which is included in the gross estate but which is not subject to claims and which—

(i) Would be allowed as deductions in the first category if the property being administered were subject to claims; and

(ii) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

See further § 20.2053-8.

(b) *Provisions applicable to both categories—*(1) *In general.* If the item is not one of those described in paragraph (a) of this section, it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of that limitation is permissible.

(2) *Bona fide requirement—*(i) *In general.* Amounts allowed as deductions under section 2053(a) and (b) must be expenses and claims that are bona fide in nature. No deduction is permissible to the extent it is founded on a transfer that is essentially donative in character (a mere cloak for a gift or bequest) except to the extent the deduction is for a claim that would be allowable as a deduction under section 2055 as a charitable bequest.

(ii) *Claims and expenses involving family members.* Factors indicative (but not necessarily determinative) of the bona fide nature of a claim or expense involving a family member of a decedent, a related entity, or a beneficiary of a decedent's estate or revocable trust, in relevant instances, may include, but are not limited to, the following—

(A) The transaction underlying the claim or expense occurs in the ordinary course of business, is negotiated at arm's length, and is free from donative intent.

(B) The nature of the claim or expense is not related to an expectation or claim of inheritance.

(C) The claim or expense originates pursuant to an agreement between the decedent and the family member, related entity, or beneficiary, and the agreement is substantiated with contemporaneous evidence.

(D) Performance by the claimant is pursuant to the terms of an agreement between the decedent and the family member, related entity, or beneficiary and the performance and the agreement can be substantiated.

(E) All amounts paid in satisfaction or settlement of a claim or expense are reported by each party for Federal income and employment tax purposes, to the extent appropriate, in a manner that is consistent with the reported nature of the claim or expense.

(iii) *Definitions.* The following definitions apply for purposes of this paragraph (b)(2):

(A) *Family members* include the spouse of the decedent; the grandparents, parents, siblings, and lineal descendants of the decedent or of the decedent's spouse; and the spouse and lineal descendants of any such grandparent, parent, and sibling. Family members include adopted individuals.

(B) A *related entity* is an entity in which the decedent, either directly or indirectly, had a beneficial ownership interest at the time of the decedent's death or at any time during the three-year period ending on the decedent's date of death. Such an entity, however, shall not include a publicly-traded entity nor shall it include a closely-held entity in which the combined beneficial interest, either direct or indirect, of the decedent and the decedent's family members, collectively, is less than 30 percent of the beneficial ownership interests (whether voting or non-voting and whether an interest in stock, capital and/or profits), as determined at the time a claim described in this section is being asserted. Notwithstanding the foregoing, an entity in which the decedent, directly or indirectly, had any managing interest (for example, as a general partner of a partnership or as a managing member of a limited liability company) at the time of the decedent's death shall be considered a related entity.

(C) *Beneficiaries* of a decedent's estate include beneficiaries of a trust of the decedent.

(3) *Court decrees and settlements*—(i) *Court decree.* If a court of competent jurisdiction over the administration of an estate reviews and approves expenditures for funeral expenses, administration expenses, claims against the estate, or unpaid mortgages (referred to in this section as a “claim or expense”), a final judicial decision in that matter may be relied upon to establish the amount of a claim or expense that is otherwise deductible under section 2053 and these regulations provided that the court actually passes upon the facts on which deductibility depends. If the court does not pass upon those facts, its decree may not be relied upon to establish the

amount of the claim or expense that is otherwise deductible under section 2053. It must appear that the court actually passed upon the merits of the claim. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. Any amount meeting the requirements of this paragraph (b)(3)(i) is deductible to the extent it actually has been paid or will be paid, subject to any applicable limitations in this section.

(ii) *Claims and expenses where court approval not required under local law.* A deduction for the amount of a claim or expense that is otherwise deductible under section 2053 and these regulations will not be denied under section 2053 solely because a local court decree has not been entered with respect to such amount, provided that no court decree is required under applicable law to determine the amount or allowability of the claim or expense.

(iii) *Consent decree.* A local court decree rendered by consent may be relied on to establish the amount of a claim or expense that is otherwise deductible under section 2053 and these regulations provided that the consent resolves a bona fide issue in a genuine contest. Consent given by all parties having interests adverse to that of the claimant will be presumed to resolve a bona fide issue in a genuine contest. Any amount meeting the requirements of this paragraph (b)(3)(iii) is deductible to the extent it actually has been paid or will be paid, subject to any applicable limitations in this section.

(iv) *Settlements.* A settlement may be relied on to establish the amount of a claim or expense (whether contingent or noncontingent) that is otherwise deductible under section 2053 and these regulations, provided that the settlement resolves a bona fide issue in a genuine contest and is the product of arm's-length negotiations by parties having adverse interests with respect to the claim or expense. A deduction will not be denied for a settlement amount paid by an estate if the estate can establish that the cost of defending or contesting the claim or expense, or

the delay associated with litigating the claim or expense, would impose a higher burden on the estate than the payment of the amount paid to settle the claim or expense. Nevertheless, no deduction will be allowed for amounts paid in settlement of an unenforceable claim. For this purpose, to the extent a claim exceeds an applicable limit under local law, the claim is deemed to be unenforceable. However, as long as the enforceability of the claim is at issue in a bona fide dispute, the claim will not be deemed to be unenforceable for this purpose. Any amount meeting the requirements of this paragraph (b)(3)(iv) is deductible to the extent it actually has been paid or will be paid, subject to any applicable limitations in this section.

(v) *Additional rules.* Notwithstanding paragraph (b)(3)(i) through (iv) of this section, additional rules may apply to the deductibility of certain claims and expenses. See § 20.2053-2 for additional rules regarding the deductibility of funeral expenses. See § 20.2053-3 for additional rules regarding the deductibility of administration expenses. See § 20.2053-4 for additional rules regarding the deductibility of claims against the estate. See § 20.2053-7 for additional rules regarding the deductibility of unpaid mortgages.

(4) *Examples.* Unless otherwise provided, assume that the amount of any claim or expense is paid out of property subject to claims and is paid within the time prescribed for filing the "United States Estate (and Generation-Skipping Transfer) Tax Return," Form 706. The following examples illustrate the application of this paragraph (b):

Example 1. Consent decree at variance with the law of the State. Decedent's (D's) estate is probated in State. D's probate estate is valued at \$100x. State law provides that the executor's commission shall not exceed 3 percent of the probate estate. A consent decree is entered allowing the executor's commission in the amount of \$5x. The estate pays the executor's commission in the amount of \$5x. For purposes of section 2053, the executor may deduct only \$3x of the \$5x expense paid for the executor's commission because the amount approved by the consent decree in excess of \$3x is in excess of the applicable limit for executor's commissions under local law. Therefore, for purposes of section 2053, the consent decree may not be relied upon to

establish the amount of the expense for the executor's commission.

Example 2. Decedent's (D's) estate is probated in State. State law grants authority to an executor to administer an estate without court approval, so long as notice of and a right to object to a proposed action is provided to interested persons. The executor of D's estate (E) proposes to sell property of the estate in order to pay the debts of D. E gives requisite notice to all interested parties and no interested person objects. E sells the real estate and pays a real estate commission of \$20x to a professional real estate agent. The amount of the real estate commission paid does not exceed the applicable limit under State law. Provided that the sale of the property was necessary to pay D's debts, expenses of administration, or taxes, to preserve the estate, or to effect distribution, the executor may deduct the \$20x expense for the real estate commission under section 2053 even though no court decree was entered approving the expense.

Example 3. Claim by family member. For a period of three years prior to D's death, D's niece (N) provides accounting and bookkeeping services on D's behalf. N is a CPA and provides similar accounting and bookkeeping services to unrelated clients. At the end of each month, N presents an itemized bill to D for services rendered. The fees charged by N conform to the prevailing market rate for the services rendered and are comparable to the fees N charges other clients for similar services. The amount due is timely paid each month by D and is properly reported for Federal income and employment tax purposes by N. In the six months prior to D's death, D's poor health prevents D from making payments to N for the amount due. After D's death, N asserts a claim against the estate for \$25x, an amount representing the amount due for the six-month period prior to D's death. D's estate pays \$25x to N in satisfaction of the claim before the return is timely filed and N properly reports the \$25x received by E for income tax purposes. Barring any other relevant facts or circumstances, E may rely on the following factors to establish that the claim is bona fide: (1) N's claim for services rendered arose in the ordinary course of business, as N is a CPA performing similar services for other clients; (2) the fees charged were deemed to be negotiated at arm's length, as the fees were consistent with the fees N charged for similar services to unrelated clients; (3) the billing records and the records of D's timely payments to N constitute contemporaneous evidence of an agreement between D and N for N's bookkeeping services; and (4) the amount of the payments to N is properly reported by N for Federal income and employment tax purposes. E may deduct the amount paid to N in satisfaction of the claim.

(c) *Provision applicable to first category only.* Deductions of the first category (described in paragraph (a)(1) of this section) are limited under section 2053(a) to amounts which would be property allowable out of property subject to claims by the law of the jurisdiction under which the decedent's estate is being administered. Further, the total allowable amount of deductions of the first category is limited by section 2053(c)(2) to the sum of—

(1) The value of property included in the decedent's gross estate and subject to claims, plus

(2) Amounts paid, out of property not subject to claims against the decedent's estate, within 9 months (15 months in the case of the estate of a decedent dying before January 1, 1971) after the decedent's death (the period within which the estate tax return must be filed under section 6075), or within any extension of time for filing the return granted under section 6081.

The term "property subject to claims" is defined in section 2053(c)(2) as meaning the property includible in the gross estate which, or the avails of which, under the applicable law, would bear the burden of the payment of these deductions in the final adjustment and settlement of the decedent's estate. However, for the purposes of this definition, the value of property subject to claims is first reduced by the amount of any deduction allowed under section 2054 for any losses from casualty or theft incurred during the settlement of the estate attributable to such property. The application of this paragraph may be illustrated by the following examples:

Example (1). The only item in the gross estate is real property valued at \$250,000 which the decedent and his surviving spouse held as tenants by the entirety. Under the local law this real property is not subject to claims. Funeral expenses of \$1,200 and debts of the decedent in the amount of \$1,500 are allowable under local law. Before the prescribed date for filing the estate tax return, the surviving spouse paid the funeral expenses and \$1,000 of the debts. The remaining \$500 of the debts was paid by her after the prescribed date for filing the return. The total amount allowable as deductions under section 2053 is limited to \$2,200, the amount paid prior to the prescribed date for filing the return.

Example (2). The only two items in the gross estate were a bank deposit of \$20,000

and insurance in the amount of \$150,000. The insurance was payable to the decedent's surviving spouse and under local law was not subject to claims. Funeral expenses of \$1,000 and debts in the amount of \$29,000 were allowable under local law. A son was executor of the estate and before the prescribed date for filing the estate tax return he paid the funeral expenses of \$9,000 of the debts, using therefor \$5,000 of the bank deposit and \$5,000 supplied by the surviving spouse. After the prescribed date for filing the return, the executor paid the remaining \$20,000 of the debts, using for that purpose the \$15,000 left in the bank account plus an additional \$5,000 supplied by the surviving spouse. The total amount allowable as deductions under section 2053 is limited to \$25,000 (\$20,000 of property subject to claims plus the \$5,000 additional amount which, before the prescribed date for filing the return, was paid out of property not subject to claims).

(d) *Amount deductible—(1) General rule.* To take into account properly events occurring after the date of a decedent's death in determining the amount deductible under section 2053 and these regulations, the deduction for any claim or expense described in paragraph (a) of this section is limited to the total amount actually paid in settlement or satisfaction of that item (subject to any applicable limitations in this section). However, see paragraph (d)(4) of this section for the rules for deducting certain ascertainable amounts; see § 20.2053-4(b) and (c) for the rules regarding the deductibility of certain claims against the estate; and see § 20.2053-7 for the rules regarding the deductibility of unpaid mortgages and other indebtedness.

(2) *Application of post-death events.* In determining whether and to what extent a deduction under section 2053 is allowable, events occurring after the date of a decedent's death will be taken into consideration—

(i) Until the expiration of the applicable period of limitations on assessment prescribed in section 6501 (including without limitation at all times during which the running of the period of limitations is suspended); and

(ii) During subsequent periods, in determining the amount (if any) of an overpayment of estate tax due in connection with a claim for refund filed within the time prescribed in section 6511(a).

(3) *Reimbursements.* A deduction is not allowed to the extent that a claim or expense described in paragraph (a) of this section is or could be compensated for by insurance or otherwise could be reimbursed. If the executor is able to establish that only a partial reimbursement could be collected, then only that portion of the potential reimbursement that reasonably could have been expected to be collected will reduce the estate's deductible portion of the total claim or expense. An executor may certify that the executor neither knows nor reasonably should have known of any available reimbursement for a claim or expense described in section 2053(a) or (b) on the estate's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), in accordance with the instructions for that form. A potential reimbursement will not reduce the deductible amount of a claim or expense to the extent that the executor, on Form 706 and in accordance with the instructions for that form, provides a reasonable explanation for his or her reasonable determination that the burden of necessary collection efforts in pursuit of a right of reimbursement would outweigh the anticipated benefit from those efforts. Nevertheless, even if a reasonable explanation is provided, subsequent events (including without limitation an actual reimbursement) occurring within the period described in § 20.2053-1(d)(2) will be considered in determining the amount (if any) of a reduction under this paragraph (d)(3) in the deductible amount of a claim or expense.

(4) *Exception for certain ascertainable amounts—(i) General rule.* A deduction will be allowed for a claim or expense that satisfies all applicable requirements even though it is not yet paid, provided that the amount to be paid is ascertainable with reasonable certainty and will be paid. For example, executors' commissions and attorneys' fees that are not yet paid, and that meet the requirements for deductibility under § 20.2053-3(b) and (c), respectively, are deemed to be ascertainable with reasonable certainty and may be deducted if such expenses will be paid. However, no deduction may be taken upon the basis of a vague or un-

certain estimate. To the extent a claim or expense is contested or contingent, such a claim or expense cannot be ascertained with reasonable certainty.

(ii) *Effect of post-death events.* A deduction under this paragraph (d)(4) will be allowed to the extent the Commissioner is reasonably satisfied that the amount to be paid is ascertainable with reasonable certainty and will be paid. In making this determination, the Commissioner will take into account events occurring after the date of a decedent's death. To the extent the amount for which a deduction was claimed does not satisfy the requirements of this paragraph (d)(4), and is not otherwise deductible, the deduction will be disallowed by the Commissioner. If a deduction is claimed on Form 706 for an amount that is not yet paid and the deduction is disallowed in whole or in part (or if no deduction is claimed on Form 706), then if the claim or expense subsequently satisfies the requirements of this paragraph (d)(4) or is paid, relief may be sought by filing a claim for refund. To preserve the estate's right to claim a refund for amounts becoming deductible after the expiration of the period of limitation for the filing of a claim for refund, a protective claim for refund may be filed in accordance with paragraph (d)(5) of this section.

(5) *Protective claim for refund—(i) In general.* A protective claim for refund under this section may be filed at any time before the expiration of the period of limitation prescribed in section 6511(a) for the filing of a claim for refund to preserve the estate's right to claim a refund by reason of claims or expenses that are not paid or do not otherwise meet the requirements of deductibility under section 2053 and these regulations until after the expiration of the period of limitation for filing a claim for refund. Such a protective claim shall be made in accordance with guidance that may be provided from time to time by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)). Although the protective claim need not state a particular dollar amount or demand an immediate refund, a protective claim must identify each outstanding claim

or expense that would have been deductible under section 2053(a) or (b) if such item already had been paid and must describe the reasons and contingencies delaying the actual payment of the claim or expense. Action on protective claims will proceed after the executor has notified the Commissioner within a reasonable period that the contingency has been resolved and that the amount deductible under § 20.2053-1 has been established.

(ii) *Effect on marital and charitable deduction.* To the extent that a protective claim for refund is filed with respect to a claim or expense that would have been deductible under section 2053(a) or (b) if such item already had been paid and that is payable out of a share that meets the requirements for a charitable deduction under section 2055 or a marital deduction under section 2056 or section 2056A, or from a combination thereof, neither the charitable deduction nor the marital deduction shall be reduced by the amount of such claim or expense until the amount is actually paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts or the requirements of § 20.2053-4(b) or (c) for deducting certain claims against the estate.

(6) [Reserved]

(7) *Examples.* Assume that the amounts described in section 2053(a) are payable out of property subject to claims and are allowable by the law of the jurisdiction governing the administration of the estate, whether the applicable jurisdiction is within or outside of the United States. Assume that the claims against the estate are not deductible under § 20.2053-4(b) or (c). Also assume, unless otherwise provided, that none of the limitations on the amount of the deduction described in this section apply to the deduction claimed under section 2053. The following examples illustrate the application of this paragraph (d):

Example 1. Amount of expense ascertainable. Decedent's (D's) estate was probated in State. State law provides that the personal representative shall receive compensation equal to 2.5 percent of the value of the probate estate. The executor (E) may claim a deduction for estimated fees equal to 2.5 percent of D's probate estate on the Form 706 filed for D's estate under the rule for deduct-

ing certain ascertainable amounts set forth in paragraph (d)(4) of this section, provided that the estimated amount will be paid. However, the Commissioner will disallow the deduction upon examination of the estate's Form 706 to the extent that the amount for which a deduction was claimed no longer satisfies the requirements of paragraph (d)(4) of this section. If this occurs, E may file a protective claim for refund in accordance with paragraph (d)(5) of this section in order to preserve the estate's right to claim a refund for the amount of the fee that is subsequently paid or that subsequently meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

Example 2. Amount of claim not ascertainable. Prior to death, Decedent (D) is sued by Claimant (C) for \$100x in a tort proceeding and responds asserting affirmative defenses available to D under applicable local law. C and D are unrelated. D subsequently dies and D's Form 706 is due before a final judgment is entered in the case. The executor of D's estate (E) may not claim a deduction with respect to C's claim on D's Form 706 under the special rule contained in paragraph (d)(4) of this section because the deductible amount cannot be ascertained with reasonable certainty. However, E may file a timely protective claim for refund in accordance with paragraph (d)(5) of this section in order to preserve the estate's right to subsequently claim a refund at the time a final judgment is entered in the case and the claim is either paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

Example 3. Amount of claim payable out of property qualifying for marital deduction. The facts are the same as in *Example 2* except that the applicable credit amount, under section 2010, against the estate tax was fully consumed by D's lifetime gifts. D is survived by Spouse (S), and D's estate passes entirely to S in a bequest that qualifies for the marital deduction under section 2056. Even though any amount D's estate ultimately pays with respect to C's claim will be paid from the assets qualifying for the marital deduction, in filing Form 706, E need not reduce the amount of the marital deduction claimed on D's Form 706. Instead, pursuant to the protective claim for refund filed by E, the marital deduction will be reduced by the claim once a final judgment is entered in the case. At that time, a deduction will be allowed for the amount that is either paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

(e) *Disallowance of double deductions.* See section 642(g) and § 1.642(g)-1 with respect to the disallowance for income

tax purposes of certain deductions unless the right to take such deductions for estate tax purposes is waived.

(f) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28719, Dec. 29, 1972; T.D. 9468, 74 FR 53657, Oct. 20, 2009; T.D. 9468, 74 FR 61525, Nov. 25, 2009]

§ 20.2053-2 Deduction for funeral expenses.

Such amounts for funeral expenses are allowed as deductions from a decedent's gross estate as (a) are actually expended, (b) would be properly allowable out of property subject to claims under the laws of the local jurisdiction, and (c) satisfy the requirements of paragraph (c) of § 20.2053-1. A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

§ 20.2053-3 Deduction for expenses of administering estate.

(a) *In general.* The amounts deductible from a decedent's gross estate as "administration expenses" of the first category (see paragraphs (a) and (c) of § 20.2053-1) are limited to such expenses as are actually and necessarily, incurred in the administration of the decedent's estate; that is, in the collection of assets, payment of debts, and distribution of property to the persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous

expenses. Each of these classes is considered separately in paragraphs (b) through (d) of this section.

(b) *Executor's commissions* (1) Executors' commissions are deductible to the extent permitted by § 20.2053-1 and this section, but no deduction may be taken if no commissions are to be paid. In addition, the amount of the commissions claimed as a deduction must be in accordance with the usually accepted standards and practice of allowing such an amount in estates of similar size and character in the jurisdiction in which the estate is being administered, or any deviation from the usually accepted standards or range of amounts (permissible under applicable local law) must be justified to the satisfaction of the Commissioner.

(2) A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the terms of the will set forth the compensation payable to the executor for services to be rendered in the administration of the estate, a deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice and to the extent permitted by § 20.2053-1.

(3) Except to the extent that a trustee is in fact performing services with respect to property subject to claims which would normally be performed by an executor, amounts paid as trustees' commissions do not constitute expenses of administration under the first category, and are only deductible as expenses of the second category to the extent provided in § 20.2053-8.

(c) *Attorney's fees*—(1) Attorney's fees are deductible to the extent permitted by § 20.2053-1 and this section. Further, the amount of the fees claimed as a deduction may not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate, the law and practice in the jurisdiction in which the estate is being administered, and the skill and expertise of the attorneys.

(2) A deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund should be claimed at the time the deficiency is contested or the refund claim is prosecuted. A deduction for